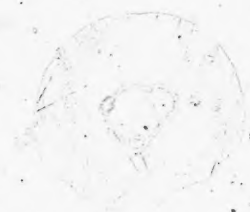


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CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939 ⁴⁰

No. 906

53

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE
KELLY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

FILED APRIL 12, 1940

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 906

THE UNITED STATES OF AMERICA, APPELLANT

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MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

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1 In United States District Court for the District
of New Jersey

UNITED STATES OF AMERICA

v.

MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE KELLY,
DEFENDANT*Indictment*

Filed Oct. 11, 1939

In the District Court of the United States of America in and for the District of New Jersey, at the April Term thereof, in the year 1939.

The Grand Jurors of the United States of America duly impaneled, sworn and charged to inquire in and for the body of the said District of New Jersey, upon their oaths present,

1. That on the 8th day of August and on various other days and dates up to and including the 12th day of September in the year 1939, at the City of Newark in the State and District of New Jersey, Frank B. Merritt, Asher Atkinson, Robert S. Johnson, James O'Connor, William C. Glassmann, Mrs. Essie Abeel, Samuel D. Metz, Edward C. Kern, Harry S. Allen, Charles McNair, Leslie D. Tasney, Dr. William I. Reed, Frank Lenz, John H. Birkett, Douglas S. Schenck, Thomas J. Corydon, Miss Margery Quigley, Mrs. Ruth L. Ballou, J. Johnson Kenyon, Mrs. Lillian D. Davis, Rev. George D. Hulst, George Young, and Mrs. Henrietta H. Hawes, were and continued to be good and lawful men and women of the said District of New Jersey then and there duly impaneled, sworn and charged to inquire in and for the body of the said District of New Jersey and then and there composed and were the lawfully constituted Grand Jury of the United States of America in and for the said District of New Jersey for the April Term, 1939, of the said District Court of the United States therein, the April, 1939, Term of service of the said Grand Jury having been on the 6th day of

2 September in the year 1939 duly extended by order of
Honorable Guy L. Fake, Judge of the said District Court, to from time to time and at such times as might be necessary and proper until the further order of the said Court, with full power and authority to hear and determine any matter brought before the said Grand Jury and to pass upon, find, sign, and return indictments and presentments into Court as the said Grand Jury should determine proper and lawful in matters already heard or partly heard but which the said Grand Jury would be

unable to finish and have presented before the expiration of the said April 1939 Term of the said District Court as otherwise provided by law;

2. That then and there and theretofore there was exhibited to and given in charge to inquire by the said Grand Jury the question of what persons, if any, were engaged in the conducting of houses of prostitution and the conducting of other illegal enterprises and businesses at and in the City of Atlantic City, in the County of Atlantic and said State and District; what income was received by the proprietors of the said enterprises and businesses and the expenses incurred by each and to whom paid; the names of the persons to whom said proprietors had paid moneys for any purpose whatever; whether the persons to whom they had paid moneys had filed false and fraudulent individual income tax returns or had filed no individual income tax returns with intent to defraud the United States, or had paid income taxes for less than was due the United States, or had paid no income tax whatever when income tax was due the United States, for all or any part of the years 1930 to 1938, both inclusive, with the view that the said Grand Jury might in all cases disclosed to them by the evidence find and return true bills of indictments for violations of income tax laws of the United States, proven by the testimony to have been committed in the said City of Atlantic City, as to them seemed necessary and proper;

3. That on the said 8th day of August in the year 1939, at the City of Newark, in the County of Essex and State and District of New Jersey and within the jurisdiction of this Court, the said Grand Jury being in lawful session and continuing their duties and inquiring of the matters and things more fully set out and described above and concerning which said person or persons, if any, had aided, abetted and procured the filing of false and fraudulent income tax returns, or had failed to file any income tax returns whatever, with intent to defraud the United States of income tax for the years 1930 to 1938, both inclusive, or any or either of them, one Marie Kenny, alias Marie Rickert, alias Mae Kelly, whose true and correct name, except as above set forth, is to the Grand Jurors unknown, came in her own proper person before the said Grand Jury then and there so in lawful session at the City of Newark aforesaid, as a witness into and concerning the inquiry then and there being conducted before the said Grand Jury in the matters aforesaid, and was duly sworn and took her corporal oath administered by William I. Reed, Foreman of the said Grand Jury, duly selected, named and appointed as such by the said Court, that the evidence which she, the said Marie Kenny, should give before the said Grand Jury in the matter then depending would be the truth, the whole

truth and nothing but the truth, the said William I. Reed, as such Foreman of the said Grand Jury, having full power and authority and being a competent person to administer the said oath to the said Marie Kenny in that behalf, the said inquiry before the said Grand Jury being a case in which a law of the United States authorized an oath to be administered and the said Grand Jury then and there inquiring as aforesaid;

4. That in the said inquiry by and before the said Grand Jury it then and there became and was, among other things, material matter and question and material and proper to be inquired into by the said Grand Jury,

(a) if houses of prostitution operated in Atlantic City, New Jersey, during the years 1932 to 1937, inclusive;

(b) whether the proprietors of the said houses of prostitution received any permission or assurance from any person holding any official position in Atlantic City or Atlantic County, or any other person, that they might conduct such businesses; the name of said person or persons and the particulars of said permission or assurance and the amounts necessary to be paid for the same;

(c) what amounts were actually paid by said proprietors for protection against raids, arrests, or other molestation in the conduct of their business, by local police and other peace officers of Atlantic City or Atlantic County; the true amounts paid, to whom and for whom paid, and during what periods in the years 1932 to 1937, inclusive;

(d) whether one Harry Slott, also known as "Slotti" (deceased), received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1932 to 1935, inclusive; and whether the said Harry Slott delivered such money or envelopes to one Raymond R. Born;

(e) whether one James J. McCullough, also known as "Mac," received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1933 to 1936, inclusive; and whether the said James J. McCullough delivered such money or envelopes to said Raymond R. Born;

(f) whether one George Whitlock, also known as "Legs," received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1936 and 1937; and whether the said George Whitlock delivered such money or envelopes to said Raymond R. Born;

(g) whether Raymond R. Born, political leader of the Third Ward, and Undersheriff of Atlantic County, New Jersey, gave

permission to said proprietors of houses of prostitution to conduct such businesses and assured them of protection against raids, arrests or other molestation in the conduct of their businesses in Atlantic City, New Jersey, by local police and other peace officers of the said City of Atlantic City or Atlantic County;

(h) whether said Raymond R. Born received income from said proprietors of houses of prostitution for such permission, assurance, and protection which he failed to report in his Federal income tax returns;

(i) whether in November 1937, the said Marie Kenny, alias Marie Rickert, alias Mae Kelly went to the Post Office Building in Atlantic City, New Jersey, and then and there told and informed Special Agent William E. Frank and Revenue Agent, Walter Doxon, Jr. that in 1935 she had gone to Ray Born, leader of the Third Ward, for permission to open a house of prostitution on Indiana Avenue in Atlantic City; that Born had given her permission to operate at said address; that she went to considerable expense to remodel the house; that due to complaints of neighbors she had to move, and received permission from Born to open on Illinois Avenue; that Born told her she would have to pay fifty dollars (\$50) a week in the winter months and one hundred dollars (\$100) a week in the summer months; that she paid said amounts to a little fellow called "Mac," and then to a tall fellow called "Legs."

5. That on the said 8th day of August in the year 1939, at the City of Newark aforesaid, in the County, State, and District aforesaid, and within the jurisdiction of this Court, the said Marie Kenny, alias Marie Rickert, alias Mae Kelly, being so duly sworn as aforesaid, contriving, and intending to pervert the true course of justice before the said Grand Jury and upon the said inquiry, and touching and concerning the material matters and the truth of the material matters so being inquired of by the said Grand Jury, upon and contrary to her said oath, falsely, wickedly, maliciously, corruptly, wilfully, and feloniously, not believing the same to be true and well knowing the same to be untrue, did answer, testify, declare, depose, and swear, among other things, in substance and to the effect following (said questions then and there being propounded by William E. Frank and Joseph W. Burns and the answers hereinafter set forth being given by said Marie Kenny):

By Mr. FRANK:

Q. Well, don't you recall at that time that you told me that you had gone to Ray Born for permission to open a house?

A. I did not. I didn't mention—because after all, I do know law. I told you I had been indicted.

Q. You never told me?

A. No; I didn't. That's the reason I said, "If you want to ask me anything or to sign that paper, you should send it to my attorney," and if he said I should do it, naturally I would do it, because I had only become indicted.

By Mr. BURNS:

Q. Mrs. Kenny, do you mean to tell this Grand Jury that when Special Agent Frank was questioning you, you didn't tell him that you asked Ray Born for permission to open?

A. I did not.

Q. Didn't he ask you whether or not you had any expenses for protection, and didn't you tell him about the \$50 and \$100, and also say that you started the house after speaking to Ray Born?

A. No; I didn't. I said I put it in an envelope, told him what it was, told him that I put \$50 like in the winter and \$100 in the summer, and then he asked me something about other donations, like for charity, and I tried to the best of my ability to tell him the amount, which was something I really couldn't exactly tell, because sometimes there was a lot and sometimes a little, but I never answered that question at that time to Mr. what's-his-name, because after all, I did know my statue at that time.

6. And the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Marie Kenny, alias Marie Rickert, alias Mae Kelly, at the said City of Newark, in the county, State, and District aforesaid, at the times she made the statements aforesaid then and there well and fully knew that they were; as a matter of fact, false and untrue in that, and for the reason that, Marie Kenny aforesaid then and there well and fully knew that she did in fact tell and inform the said Special Agent William E. Frank and Revenue Agent Walter Doxon, Jr. that she had gone to Ray Born for permission to open a house of prostitution in Atlantic City, New Jersey, and that she operated such a house after speaking to Ray Born in 1935.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 231, Title 18, United States Code.)

JOHN J. QUINN,

John J. Quinn,

United States Attorney.

A True Bill:

WM. I. REED,

Foreman.

OCTOBER 1935.

[File endorsement omitted.]

6

UNITED STATES VS. MARIE KENNY

8 In United States District Court, District of New
Jersey

[Title omitted.]

*Notice of Motion to require United States Attorney to move trial
of indictment, etc.*

Filed Feb. 21, 1940

To Hon. JOHN J. QUINN,
United States Attorney.

Sir: Please take notice that on Tuesday, February 27th, 1940,
at ten o'clock in the forenoon of said day, at the United States
Court House, Camden, New Jersey, I shall move the Court to
require the United States Attorney to move the trial of the in-
dictment in the above-entitled matter or make other final dispo-
sition thereof.

JAMES MERCER DAVIS,
Attorney of Defendant.

[File endorsement omitted.]

Service acknowledged this 21 day of February.

JOHN J. QUINN,
U. S. Attorney.

By W. ORVYL SCHALIC,
Assistant.

9 In United States District Court, District of New
Jersey

[Title omitted.]

Motion to quash indictment

Filed Feb. 21, 1940

The defendant, Marie Kenny, moves the Court to quash the
indictment in the above entitled matter on the ground that the
said indictment does not allege an offense against the United
States.

JAMES MERCER DAVIS,
Attorney.

[File endorsement omitted.]

11 In United States District Court, District of New
Jersey

On Indictment. 8903b. On Motion of Defendant to Quash.

UNITED STATES OF AMERICA

vs.

MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE KELLY,
DEFENDANT

James Mercer Davis, for the motion,
John J. Quinn (United States Attorney) by Joseph W. Burnis
(Special Assistant U. S. Attorney), opposed.

Memorandum opinion

Filed Feb. 14, 1940

Avis, District Judge: The motion here is to quash the indictment because it is alleged that it does not charge an offense against the United States.

The same conditions exist as in the case of United States of America v. May Harris, Alias Kitty Harris (8911b), in which case I have this day filed a memorandum granting a motion to quash.

For the reasons stated in that memorandum, an order will be made quashing the indictment in the present case.

[File endorsement omitted.]

12 In United States District Court, District of New
Jersey

On Indictment. 8903b.

UNITED STATES OF AMERICA,

vs.

MARIE KENNY, ALIAS MARIE RICKERT, ALIAS MAE KELLY,
DEFENDANT.

Order Quashing Indictment

Filed Feb. 20, 1940

Motion having been made to quash the indictment made in the above cause on the ground that the said indictment does not

allege an offence against the United States, and the matter coming on to be heard in the presence of James Mercer Davis, Esq., Attorney for the defendant, and in the presence of Joseph W. Burns, Esq., Special Asst. U. S. Attorney, on behalf of the United States, and the Court having heard the argument of Counsel and inspected the indictment,

It is, on this 20th day of February, 1940, on motion of James Mercer Davis, Esq., Attorney of the defendant, ordered that the said indictment be and the same hereby is quashed, vacated, set aside and for nothing holden.

JOHN BOYD AVIS,
U. S. D. J.

[File endorsement omitted.]

13 In United States District Court, District of New
Jersey

[Title omitted.]

Petition for Appeal

Filed March 20, 1940

Comes now the United States of America, plaintiff herein, and states that on the 20th day of February, 1940, the District Court for the District of New Jersey sustained a motion of the defendant to quash the indictment herein, and the United States of America feeling aggrieved at the ruling of said District Court in sustaining said motion to quash, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
JOHN J. QUINN,

United States Attorney for the District of New Jersey.

JOSEPH W. BURNS,

Special Assistant to the United States Attorney.

[File endorsement omitted.]

14 In United States District Court, District of New
Jersey

[Title omitted.]

Assignments of Error

Filed March 20, 1940

Comes now the United States of America, by John J. Quinn, United States Attorney for the District of New Jersey, and avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the court erred in quashing the indictment.
2. That the court erred in holding that the indictment did not charge an offense under the Perjury Statute.
3. That the court erred in holding that a false denial under oath by a witness before a grand jury that she had theretofore made certain statements to Government agents did not constitute a violation of the Perjury Statute, even though the fact that she had made the statements was material to the grand jury's inquiry.

JOHN J. QUINN,
United States Attorney for the District of New Jersey.

JOSEPH W. BURNS,
Special Assistant to the United States Attorney.

[File endorsement omitted.]

15 In United States District Court, District of New
Jersey

[Title omitted.]

*Order Allowing Appeal to the Supreme Court of the United
States*

Filed March 20, 1940

This cause having come on this day before the Court on Petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the judgment sustaining a motion of the defendant to quash the indictment in said cause, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to

entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court, in sustaining the motion of the defendant to quash the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Camden, New Jersey, this 20th day of March 1940.

By the Court:

JOHN BYRD AVIS,

United States District Judge for the District of New Jersey.

16 In United States District Court, District of New
Jersey

[Title omitted.]

Praecepta for Transcript of Record

Filed March 21, 1940

TO THE CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY:

The appellant hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the District of New Jersey in connection with its appeal to the Supreme Court of the United States you include the following:

1. Indictment.
2. Notice of and motion to quash.
3. Opinion.
4. Judgment sustaining motion to quash.
5. Petition for appeal to the Supreme Court.
6. Statement of jurisdiction of Supreme Court.
7. Assignments of error.
8. Order allowing appeal.
9. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction, together with statement as to jurisdiction and opinion in the case of United States of America, appellant, v. May Harris, alias Kitty Harris, appellee, referred to therein.

10. Citation.

11. Praeipe.

JOHN J. QUINN,

United States Attorney for the District of New Jersey.

JOSEPH W. BURNS,

Special Assistant to the United States Attorney.


Service of the foregoing Praeipe for Transcript of Record is acknowledged this 21 day of March, 1940.

JAMES MERCER DAVIS,

Attorney for Defendant.

18 [Citation in usual form showing service on James Mercer Davis, filed April 17, 1940, omitted in printing.]

19 [Clerk's Certificate to foregoing transcript omitted in printing.]

20  In Supreme Court of the United States

[Title omitted.]

Statement of Points To Be Relied Upon and Designation of Record

Filed May 1, 1940

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record; as filed in the above entitled cause, necessary for the consideration of the points relied upon.

FRANCIS BIDDLE,

Francis Biddle,

Solicitor General.

APRIL 20th, 1940.

Service of the above Statement of Points and Designation of Record acknowledged this 24 day of April, 1940.

JAMES MERCER DAVIS,

Counsel for Appellee.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44,313. New Jersey, D. C. U. S., Term No. 906. The United States of America, appellant, vs. Marie Kenny, alias Marie Rickert, alias Mae Kelly. Filed April 12, 1940. Term No. 906 O. T. 1939.